Remarks

Reconsideration of the above-captioned application is respectfully requested.

a.   Claims 1-4 have been rejected under 35 U.S.C. §102 as being anticipated by Pontenzone et al., USPP 2002/0152278.

b.   Claims 5, 6, 13, 14, and 21 have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Hempleman et al., USPN 6,243,725.

c.   Claims 7-12, 15, 17-20, and 22, of which Claims 8 and 16 are independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al., USPP 2002/0042923.

d.   Claim 16 was rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al. and Hempleman et al.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

Anticipation Rejections, Claims 1, 2, and 4

As now amended, Claim 1 requires generating a search vector by accessing a database containing data selected from the group including demographic data such as gender, age, income range, marital status as disclosed in the specification on page 9, last four lines. The reasons given on page 2 of the Office Action for persisting in the rejections have thus been removed. Specifically, no longer is "marketing data" recited as is

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otherwise alleged to be present in Pontenzone nor can the recited demographic data continue to be "reasonably

interpreted" as being the preference of listeners, as is likewise otherwise alleged to be present in Pontenzone.

The rejections are overcome.

Obviousness Rejections, Claims 5, 6, 13, 14

Claim 5 has been rewritten in independent form. As Applicant noted in good faith in the prior

response, the rejection of these claims fails to allege that Hempleman et al. uses metadata for billing, much

less metadata associated with a title as required by Claims 5 and 13, and indeed the reference nowhere even

mentions the word "metadata". This has been responded to on pages 2 and 3 of the Office Action in two

ways. First, the examiner has alleged that using metadata for billing is not recited in Claim 5. But the plain

language of Claim 5 belies that allegation: "*if* metadata associated with the title indicates a billable event,

billing the user for downloading content associated with the title". Clearly, the conditional word "if" ties the

first clause (metadata content) to the second clause (billing). To discount a good faith argument that

accurately captures the claim language simply because the argument is not cast *in haec verba* to the claim does

not establish a legitimate legal, much less good faith, justification for denying patentability.

The second rationale provided in the Office Action for persisting in the rejection of Claim 5 is that

Applicant is guilty of "attacking references individually", and that Pontenzone, used in combination with

Hempleman, mentions "metadata". Reliance on the boilerplate macro of "attacking references individually"

is misplaced. There is no way for a patent applicant to discuss why certain features of a claim are not

rendered obvious by the relied-upon references without actually naming individual references and discussing

their individual teachings, even though such analysis risks castigation for "attacking references individually".

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In the present case, Applicant is fully aware that the rejection of Claim 5 is predicated on a combination of references; Applicant's point remains that the primary reference does not even mention "metadata" while the secondary reference does not use it for the purpose claimed. This is not "attacking" anything but rather is a good faith analysis as to why the combination of references do not, together, arrive at the claim under discussion.

Obviousness Rejections, Claims 7-12, 15-20, and 22

Addressing the rejection of the sole remaining independent claim (Claim 8) at issue, Applicant believes that an important but unmentioned difference exists between Asmussen et al. and Claim 8. With more specificity, Asmussen et al. "starts by" (abstract) crawling a content metadata database to construct a "metadata element" database of indexed word items with vector values. As taught in both the abstract of Asmussen et al. and in paragraph 21, when a user inputs a search request, the vector value of the request is compared to vector values in the "metadata element" database to return suggested content. Only *after* content has been searched and prospective results returned does Asmussen et al. resort to content filters (including a user history filter and a user profile filter) to prune the results, with the pruned results being ranked according to similarities to previously accessed content by that user, paragraph 27.

In marked contrast, Claim 8 recites almost the opposite dependency: first accessing and retrieving historical search and purchasing data based on profile data associated with the user, and then *using retrieved historical search and purchasing data, searching* for multimedia content, which is used to generate a playlist. Asmussen et al. simply cannot be said to do this because its relied-upon filters and ranking occur *on already-generated* search results, not as *bases* on which to conduct the search itself.

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Thus, even if Asmussen et al. were to be combined with the primary reference as proposed, the present invention of Claim 8 would not result.

Once again, instead of explaining why Applicant is wrong as a technical matter, the "attacking references individually" macro is invoked without explaining what specific teaching or suggestion in the other references would motivate one to change Asmussen to arrive at Claim 8. In fact, the rejection proposes to use Asmussen to modify Pontenzone; even if Pontenzone were to be so modified in accordance with Asmussen's teachings, for reasons above Claim 8 would not result since Asmussen would not render it and since no other reference in turn has been identified for motivation to change Asmussen in a way that, were it used to modify Pontenzone, Claim 8 would result.

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